

### REMARKS

This is in response to the Office Action . Claim 2 is amended based upon such disclosure as that in lines 16-21 on page 11 of the specification (“the starch component is hydroxyalkylated starch or an ester of it. ... the degree of substitution is at least 2, preferably 2.5-3”). Claim 11 is amended to overcome a formal rejection. No new matter is introduced by this Amendment. Claims 2-11 and 13-17 are pending in the present application.

#### Priority

In the Office Action of September 2, 2010, the Examiner indicated that a certified copy of FI 2003-5172 was not found. However, upon checking the Image File Wrapper in Private PAIR, it appears that such certified copy is in the official USPTO record of this application, in a filing dated 03-22-2006 and entitled “Certified Copy of Foreign Priority Application.”

#### Failure to define

Claim 11 was rejected under 35 USC 112, second paragraph, due to lack of appropriate antecedent basis. Claim 11 is amended to be consonant with the recitation in claim 2 from which it ultimately depends of “mixing air into the starch gel to foam the gel and the foamed gel is cooled rapidly to produce said stable foam.” Applicants respectfully submit that the claim in its current form satisfies the requirements of the statute.

#### Prior art

Claims 2-11 and 13-17 were rejected under 35 U.S.C. § 103(a) as being unpatentable over US 5,851,461 to Bakis et al. The rejection is respectfully traversed as to the claims in their current form.

Bakis relates to polysaccharide derivatives such as alginic acid or hyaluronic acid. These are anionic products that are chelated with multivalent ions. The reference also briefly refers to

native starch. ***The claims hereinabove are now limited to the use of chemical starch derivatives which are not suggested by Bakis et al. '461.***

In column 3, lines 19-26 of Bakis, it is stated that the processing of the polysaccharide is carried out in an alkaline medium into which it dissolves. In contrast, the present invention does not require an alkali to dissolve the starches used. Applicants employ a hydroxyalkylated starch or an ester thereof, said starch or starch ester having a degree of substitution ranging from 2-3. Applicants' starting materials are either starches that gelatinize in water or starch esters which are insoluble in water, but which are used as dispersions thereof.

The Bakis et al patent does not teach, suggest, or motivate persons of ordinary skill in the art to meet the terms of the claimed subject matter. Indeed, the Examiner makes note of the fact that Bakis et al. do not expressly teach that the average size of bubbles is less than approximately 10 micrometers or that Bakis et al. do not expressly teach a water gel of starch. Hindsight is not a valid basis for rejection, and it is submitted that the claims herein are not anticipated or rendered obvious without the use of hindsight in making the rejection. The Examiner argues that only permissible hindsight is used in making the rejection, and argues on page 6 of the Office Action that "depending on the identity, concentration, and properties such as gelatinization temperature of the starch, as well as the conditions for the mechanical foaming process, the starch may gelatinize due to heat and friction generated by the mechanical action of foaming." This detailed technological speculation concerning what a starch "may" do is not accepted by Applicants in the absence of relevant documentation.

It is respectfully submitted that the rejection of record is not sustainable with regard to claims 2-11 and 13-17 presented hereinabove.

Contact information

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact Richard Gallagher, Registration No. 28,781, at the telephone number of the undersigned below to conduct an interview in an effort to expedite prosecution in connection with the present application.

If necessary, the Director is hereby authorized in this, concurrent, and future replies to charge any fees required during the pendency of the above-identified application or credit any overpayment to Deposit Account No. 02-2448.

Dated: November 4, 2011

Respectfully submitted,

By

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